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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/967,109	09/28/2001	Trevor Vernon Smith	3120.00026	8086

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EXAMINER

LEGESSE, NINI F

ART UNIT

PAPER NUMBER

3711

DATE MAILED: 04/05/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/967,109

Applicant(s)

SMITH, TREVOR VERNON

Examiner

Nini F. Legesse

Art Unit

3711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 September 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Specification

The disclosure is objected to because of the following informalities:

- The last paragraph on page 4 of the specification is unclear because there are several "the or" phrases disclosed that have no meaning.
- The last paragraph on page 12 of the specification is unclear because there are several "bttl" words used that appear to have no meaning.

Appropriate correction is required.

Drawings

The drawings are objected to under 37 CFR 1.83(a) because they fail to show how the position indicator arm is attached to the shoulder pad including the ball and socket joint and the locking means as disclosed on page 3 of the specification.

- A locking means as disclosed in claim 10 is not shown in any of the drawings;
- A ball and socket joint as disclosed in claim 11 is not shown in any of the drawings.

Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- Claim 1 recites the limitations "the shoulder turn" and "the golfer". There is insufficient antecedent basis for these limitations in the claim.
- Claim 2 recites the limitation "the takeaway in the back swing". There is insufficient antecedent basis for this limitation in the claim and also this limitation is unclear. This claim is indefinite because it is not clear as to what structure is encompassed. This claim does not appear to include any structure.
- Claim 4 recites the limitation "arm is an elongate member". To make this limitation grammatically correct it should be changed to "arm is an elongated member".
- Claim 7 recites the limitation "means in adjustably" this is unclear.
- The limitation "ball and socket joint" in claim 11 is not clearly shown in drawing.
- Claim 19 recites the limitation "the support member locates over". To make this limitation grammatically correct it should be changed to "the support member is located".

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-7, 9, 12-16, 19 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Cole (US Patent No. 5,919,097).

Cole discloses a golf swing indicator (10) comprising:

- An attachment means (16, 24, 26) for attaching a support member (12) adjacent to a shoulder of the golfer, the support member (12) having shoulder position indicator means/arm (22) projecting outwardly therefrom and forwardly relative to the golfer (Fig. 3) and the golf training aid is used for indicating the shoulder turn during the takeaway in the back swing (column 2, lines 25-34);
- The indicator arm is an elongated member and is substantially perpendicular to the shoulder of the golfer (22, refer to Fig. 1 & 3);
- The indicator arm comprises a resilient member (in column 1, lines 40-43 it is discloses that the device is made of plastic sheet and plastic is a resilient material and also in column 4, line 7 it is disclosed that the arm is a flexible material);
- The shoulder position indicator means (22) is adjustably secured to the support member (since Velcro members 24 and 26 are used to position the indicator means, it can be concluded that the position indicator is adjustable);

- Position retaining means (24,26);
- Indicator member (22);
- The shoulder position indicator means comprises a first indicator member that is supported by the indicator arm (referring to Figs. 1-3, the first indicator member is considered to be the tip of item 22) and a second indicator member located adjacent to the shoulder of the golfer (referring to Fig. 1-3, the second indicator member is considered to be the bottom of item 22)
- A pad (14);
- The support member is located over the forward shoulder of the golfer relative to the swing (Fig. 3); and
- The attachment means comprises a harness mechanism (16).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cole in view of Lazier (US Patent No. 5,785,603).

Cole fails to disclose a shoulder position indicator with pivotally securing means and a locking means. Lazier discloses a pivotally secured means (Figs. 1-7) and a locking means (66). It would have been obvious to one of ordinary skill in the art at the time the

invention was made to provide a pivotally secured support member with a locking means as disclosed by Lazier in the Cole device in order to secure the shoulder position indicator to any position.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cole in view of Stawicki (US Patent No. 5,150,901).

Cole fails to disclose a ball and socket joint. Stawicki discloses a ball and socket joint (42). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a ball and socket joint as taught by Stawicki in the Cole device in order to practice the correct swing for striking a golf ball for any particular golf shot.

Claim 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cole in view of Stawicki and Pritchard et al. (US Patent No. 3,883,053). Cole discloses a pad (14) but fails to disclose a shoulder pad because his device is to be attached to the upper part of an arm. He also does not explicitly teach that the pad is flexible. Stawicki discloses a golf swing training device with shoulder straps (22 & 26). And, Pritchard et al. discloses a flexible pad (14) for shoulder straps (12). All these references including Cole disclose a pad that is used as a cushion between the golfer and a device. It would have been obvious to one of ordinary skill in the art at the time the invention was made to include a shoulder strap and a shoulder strap pad as taught by Stawicki and Pritchard et al. as an alternative way of positioning the device at a different location of a golfer's body.

Claims 21-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cole. These method claims appear to be directed to the obvious steps of using Lazier's golf swing device.


Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nini F. Legesse whose telephone number is (703) 605-1233. The examiner can normally be reached on Monday-Friday from 9:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Sewell, can be reached on (703) 308-2126. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-7768.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.


Paul T. Sewell
Supervisory Patent Examiner
Group 3700